

1 3. Defendant Michael Chertoff is the Secretary of the DHS and is sued here in his official
2 capacity.

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4 4. Defendant Emilio Gonzales is the director of USCIS and is sued here in his official
5 capacity.

6 5. Defendant Francis D. Siciliano is the Field Office Director for the San Jose USCIS
7 Office and is sued here in his official capacity.

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9 6. Defendant David Still is the District Director of the San Francisco USCIS district and is
10 sued here in his official capacity.

11 7. Plaintiff alleges that Defendants each have a role in the adjudication of the applications
12 for naturalization

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14 8. This Court has jurisdiction of the action pursuant to 28 U.S.C. §§§1331, 1361, 1651 and
15 5 U.S.C. §701 et seq. Relief is requested pursuant to the aforementioned statutes and under
16 28 U.S.C. §2201.

17 9. This action is brought to redress the deprivation of rights, privileges and immunities
18 secured to plaintiff to compel Defendants to perform a duty Defendants owe to Plaintiff. This
19 action is brought to compel Defendants and those acting under them to take action on a Form
20 N-400, Application for Naturalization, (hereafter: "the Application") in order for Plaintiff to
21 become a Naturalized Citizen of the United States.
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23 10. The N-400 Application was filed with the USCIS California Service Center on or about
24 April 2, 2004. Plaintiff was interviewed by an officer at the USCIS San Jose Field Office on
25 December 7, 2004 and successfully passed the English language and United States history and
26 government tests.

1 11. Approximately three years after the interview, plaintiff still awaits the decision. Certainly
2 more than 120 days have passed since the interview in this matter, thus vesting jurisdiction with
3 this court under 8 U.S.C. § 1447.

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5 12. Plaintiff is eligible to have his Application adjudicated.

6 13. Defendants, the Department of Homeland Security and U.S. Citizenship and Immigration
7 Services are charged by law with the statutory obligation to adjudicate this Application.

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9 14. Venue is proper under 28 USC §1391(e) because the Plaintiff resides in this district and
10 no real property is involved in this action.

11 ***FACTS***

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13 15. Plaintiff filed his Form N-400, Application for Naturalization, with the USCIS California
14 Service Center on or about April 2, 2004.

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16 16. Plaintiff was interviewed by an officer at the USCIS San Jose Field Office on December 7,
17 2004, and successfully passed the English language and United States history and government
18 tests. However, plaintiff's application was not adjudicated pending an FBI criminal record/name
19 check.

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21 17. To date, plaintiff's FBI criminal record/name check has not been completed and
22 plaintiff's application remains pending.

23 18. Defendants have taken no action on plaintiff's case despite the fact that three years have
24 elapsed since plaintiff's naturalization interview on December 7, 2004.

25 ***CLAIMS***

1 19. Defendants' refusal to act in this case is as a matter of law, arbitrary and not in
2 accordance with the law.

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4 20. Plaintiff has been, and continues to be greatly damaged by the failure of Defendants to
5 act in accordance with their duties under the law.

6 21. Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. §701et. seq., are
7 unlawfully withholding and/or unreasonably delaying action on plaintiff's naturalization
8 application and have failed to carry out the adjudicative and administrative functions delegated
9 to them by law and regulation.

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11 22. **WHEREFORE**, Plaintiff prays that the Court:

12 (a) Compel Defendants and those acting under them to perform their duty to
13 adjudicate the Petition; and

14
15 (b) Grant such other and further relief as this Court deems proper under the
16 circumstances; and

17 (c) Grant reasonable Attorney's fees and costs of Court to Plaintiff under the Equal
18 Access to Justice Act.

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20 Respectfully submitted this 22nd day of October, 2007.

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22 _____
23 ELIAS Z. SHAMIEH

24 _____
25 DINA M. SOKHN

26 Attorneys for Plaintiff